

No. 4231

**UNITED STATES OF AMERICA
and
BRAZIL**

Exchange of notes (with enclosure) constituting an agreement relating to copyright relations. Washington, 2 April 1957

Official texts: English and Portuguese.

Registered by the United States of America on 19 March 1958.

**ÉTATS-UNIS D'AMÉRIQUE
et
BRÉSIL**

Échange de notes (avec pièce jointe) constituant un accord relatif aux relations entre les deux pays en matière de propriété littéraire et artistique. Washington, 2 avril 1957

Textes officiels anglais et portugais.

Enregistré par les États-Unis d'Amérique le 19 mars 1958.

No. 4231. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND BRAZIL RELATING TO COPYRIGHT RELATIONS. WASHINGTON, 2 APRIL 1957

I

The Brazilian Ambassador to the Secretary of State

[PORTUGUESE TEXT — TEXTE PORTUGAIS]

[TRANSLATION² — TRADUCTION³]

EMBAIXADA DOS ESTADOS UNIDOS
DO BRASIL

EMBASSY OF THE UNITED STATES
OF BRAZIL

98/654.(22) (42)

Nº 98/654.(22) (42)

Washington, em 2 de abril de 1957
Senhor Secretário de Estado,

Washington, D.C., April 2, 1957
Mr. Secretary of State :

De acôrdo com instruções de meu Govêrno, tenho a honra de reportar-me a recentes conversações entre representantes dos nossos dois Governos sôbre as relações existentes entre os Estados Unidos do Brasil e os Estados Unidos da América no que se refere a direitos autorais. Entende o meu Govêrno que, uma vez assegurado que os cidadãos dos Estados Unidos da América podem valer-se, segundo a Lei brasileira, dos benefícios de direitos autorais, nas mesmas bases, substancialmente, em que são concedidos a cidadãos brasileiros, o Presidente dos Estados Unidos da América fará uma proclamação, de acôrdo com os dispositivos da Seccão 9, Título 17, do Código dos Estados Unidos da América, em que declare que as condições especificadas na Seccão 1 (e)

In accordance with instructions from my Government, I have the honor to refer to recent conversations between representatives of our two Governments with respect to the copyright relations between the United States of America and the United States of Brazil. It is the understanding of my Government that, upon receipt of assurances that citizens of the United States of America are entitled to obtain under Brazilian law the benefit of copyright on substantially the same basis as is granted to Brazilian citizens, the President of the United States of America will issue a proclamation, pursuant to the provisions of Section 9, Title 17, of the United States Code, declaring that the conditions specified in Section 1 (e) and 9 (b) of the said Title 17 exist with

¹ Came into force on 2 April 1957 by the exchange of the said notes.

² Translation by the Government of the United States of America.

³ Traduction du Gouvernement des États-Unis d'Amérique.

e 9 (b) do citado Título 17 se aplicam a cidadãos dos Estados Unidos do Brasil e que estes têm direito às vantagens do referido Título 17.

2. Solicito a atenção de Vossa Excelência para o Artigo I da Lei 496, de 1º de agosto de 1898, emendada pelo Artigo I da Lei 2.577, de 17 de janeiro de 1912, dos Estados Unidos do Brasil, semelhante ao parágrafo (b) Secção 9 do referido Título 17 do Código dos Estados Unidos da América, e segundo o qual aos estrangeiros não residentes nos Estados Unidos do Brasil, cujas obras são publicadas fora do país, são garantidos os mesmos direitos dados aos nacionais brasileiros no que respeita à propriedade literária, científica ou artística, desde que sejam nacionais de país que tenha aderido a convenções internacionais sôbre o assunto ou assinado tratado com o Brasil que assegure reciprocidade de proteção a obras brasileiras.

3. Tanto os Estados Unidos da América quanto os Estados Unidos do Brasil são Partes da Convenção de Buenos Aires de 1910, pela qual nacionais de um país recebem proteção geral de direitos autorais no outro país. Entretanto, com o propósito de esclarecer, reforçar e reafirmar, neste momento, os benefícios recíprocos reconhecidos, pela Convenção de Buenos Aires, aos autores e titulares de direitos autorais dos Estados Unidos da América, instruiu-me o meu Governo no sentido de assegurar que, de acôrdo com os dispositivos da lei brasileira e os têrmos da citada Con-

respect to citizens of the United States of Brazil, and that citizens of the United States of Brazil are entitled to all the benefits of the said Title 17.

2. I have the honor to invite Your Excellency's attention to Article I of Law 496 of August 1, 1898, as amended by Article I of Law 2577 of January 17, 1912, of the United States of Brazil, which is similar to paragraph (b), Section 9, of the said Title 17 of the United States Code, and under which aliens not resident in the United States of Brazil whose works are published abroad, are guaranteed the same rights with reference to literary, scientific or artistic property as are nationals of Brazil, provided they are nationals of a country which has adhered to international conventions on the subject or has signed a treaty with Brazil insuring the reciprocity of protection to Brazilian works.

3. Both the United States of America and the United States of Brazil are parties to the Buenos Aires Convention of 1910,¹ under which nationals of one country receive general copyright protection in the other country. However, with a view to clarifying, strengthening and reaffirming at this time the reciprocal benefits for authors and copyright proprietors of the United States of America as achieved by the Buenos Aires Convention, my Government has instructed me to state its assurances that under the provisions of Brazilian law and by the terms of the above-mentioned Buenos

¹ United States of America : *Treaty Series 593*,

venção de Buenos Aires, a tôdas as obras literárias, científicas ou artísticas, publicadas nos Estados Unidos da América, é dada a mesma proteção de direitos autorais concedida a obras publicadas nos Estados Unidos do Brasil, inclusive proteção de partes de instrumento que servem para reproduzir mecânicamente obras musicais, e que cidadãos dos Estados Unidos da América podem valer-se nos Estados Unidos do Brasil dos direitos autorais de suas obras, nas mesmas bases, substancialmente, em que deles se valem os cidadãos dos Estados Unidos do Brasil, inclusive direitos semelhantes aos previstos pela Secção I (e) do citado Título 17.

4. Por sua vez, o Govêrno brasileiro entende que êste acôrdo concede aos autores e titulares de direitos autorais dos Estados Unidos do Brasil, em base de reciprocidade, os mesmos direitos e a mesma proteção estendidos aos cidadãos dos Estados Unidos da América nos Estados Unidos da América, isto é, autores e titulares de direitos autorais dos Estados Unidos do Brasil, a fim de obterem registro e proteção para suas obras, terão que satisfazer apenas os mesmos requisitos a que estejam sujeitos autores cidadãos dos Estados Unidos da América para o registro de suas obras e para a proteção dêle decorrente, não sendo necessário a autores e titulares de direitos autorais dos Estados Unidos do Brasil residirem nos Estados Unidos da América ou ali publicarem suas obras musicais, a fim de fazê-las registrar e protegê-las.

Aires Convention, all literary, artistic and scientific works published in the United States of America are afforded the same copyright protection, including protection of parts of instruments serving to reproduce mechanically the musical work, as is afforded to works published in the United States of Brazil, and that citizens of the United States of America are entitled to obtain copyright in the United States of Brazil for their works on substantially the same bases as citizens of the United States of Brazil, including rights similar to those provided by Section I (e) of the said Title 17.

4. Conversely, the Brazilian Government understands that this agreement will grant to the authors and copyright proprietors of the United States of Brazil, on a reciprocal basis, the same rights and the same protection as those to which citizens of the United States of America are entitled in the United States of America, that is, authors and copyright proprietors of the United States of Brazil, in order to have their works registered and protected, will have to conform only to the same requirements to which authors who themselves are citizens of the United States of America are subject for the registration of their works and for the protection ensuing therefrom, and it will be unnecessary for authors and copyright proprietors of the United States of Brazil either to reside or to publish their musical works in the United States of America in order to have them registered and protected.

5. O Governo brasileiro entende, ademais, que nada neste Acôrdo prejudicará os direitos adquiridos (*jure acquisiti*) dos autores ou titulares de direitos autorais dos Estados Unidos do Brasil ou os impedirá de invocar a proteção dos tribunais dos Estados Unidos da América com relação a obras não compreendidas no acôrdo ora concluído.

Aproveito a oportunidade para renovar a Vossa Excelência os protestos da minha mais alta consideração.

Ernani DO AMARAL PEIXOTO

A Sua Excelência
o Senhor John Foster Dulles
Secretário de Estado
dos Estados Unidos
da América

5. The Brazilian Government understands, further, that nothing in this agreement will either jeopardize the vested rights (*jure acquisiti*) of the authors or copyright proprietors of the United States of Brazil or prevent them from invoking the protection of the courts of the United States of America in respect of the works not covered by the agreement which is now concluded.

Accept, Excellency, the renewed assurances of my highest consideration.

Ernani DO AMARAL PEIXOTO

His Excellency
John Foster Dulles
Secretary of State
of the United States
of America

II

The Secretary of State to the Brazilian Ambassador

DEPARTMENT OF STATE
WASHINGTON

April 2, 1957

Excellency :

I have the honor to acknowledge the receipt of your note of today's date in which, in accordance with instructions from your Government, you refer to recent conversations between representatives of our two Governments with respect to the copyright relations between the United States of Brazil and the United States of America.

You state that it is the understanding of your Government that, upon receipt of affirmative assurances that citizens of the United States of America are entitled to obtain under Brazilian law the benefit of copyright on substantially the same basis as is granted to Brazilian citizens, the President of the United States of America will issue a proclamation, pursuant to the provisions of Section 9 of Title 17 of the United States Code, declaring that the conditions

specified in Sections 1 (*e*) and 9 (*b*) of the said Title 17 exist with respect to citizens of the United States of Brazil and that citizens of the United States of Brazil are entitled to all the benefits of the said Title 17.

You further invite attention to Article I of Law 496 of August 1, 1898, as amended by Article I of Law 2577 of January 17, 1912, of the United States of Brazil, which is similar to paragraph (*b*) of Section 9 of the said Title 17 of the United States Code, under which aliens not resident in the United States of Brazil whose works are published abroad are guaranteed the same rights with reference to literary, scientific or artistic property as are nationals of Brazil, provided they are nationals of a country which has adhered to international conventions on the subject or has signed treaties with Brazil insuring the reciprocity of protection to Brazilian works.

You further state that both the United States of Brazil and the United States of America are parties to the Buenos Aires Convention of 1910, under which nationals of one country receive general copyright protection in the other country. You state that with a view to clarifying, strengthening, and reaffirming at this time the reciprocal benefits for authors and copyright proprietors of the United States of America as achieved by the Buenos Aires Convention, your Government has instructed you to state its assurances that under the provisions of Brazilian law and by the terms of the above-mentioned Buenos Aires Convention, all literary, artistic and scientific works published in the United States of America are afforded the same copyright protection, including protection of parts of instruments serving to reproduce mechanically the musical work, as is afforded to works published in the United States of Brazil, and that citizens of the United States of America are entitled to obtain copyright in the United States of Brazil for their works on substantially the same basis as citizens of the United States of Brazil, including rights similar to those provided by Section 1 (*e*) of the said Title 17. Conversely, the Brazilian Government understands that this agreement will grant to the authors and copyright proprietors of the United States of Brazil, on a reciprocal basis, the same rights and the same protection as those to which citizens of the United States of America are entitled in the United States of America, that is, authors and copyright proprietors of the United States of Brazil, in order to have their works registered and protected, will have to conform only to the same requirements to which authors who themselves are citizens of the United States of America are subject for the registration of their works and for the protection ensuing therefrom and it will be unnecessary for author and copyright proprietors of the United States of Brazil either to reside or to publish their musical works in the United States of America in order to have them registered and protected. The Brazilian Government understands, further, that nothing in this agreement will either jeopardize the vested rights (*jures acquisiti*) of the authors or copyright proprietors of the United States of Brazil or prevent them from invoking the protection of the Courts of the United States of America in respect of the works not covered by the agreement which is now concluded.

I have the honor to inform you that, in view of the assurances contained in your note respecting the copyright protection afforded to citizens of the United States of America by the United States of Brazil, the President of the United States of America has issued today a proclamation,¹ a copy of which is enclosed herewith, declaring and proclaiming, on the basis of the assurances set forth in your note that there exist with respect to the United States of Brazil the reciprocal conditions required by Section 1 (e) and 9 (b) of the said Title 17, and that citizens of the United States of Brazil are entitled to all the benefits of the said Title 17. The proclamation recites the consideration prescribed in the law that the provisions of Section 1 (e) of the said Title 17, so far as they secure copyright controlling parts of instruments serving to reproduce mechanically the musical work, shall apply only to compositions published and copyrighted after the date of the proclamation and further, that said provision shall apply only to compositions which have not been reproduced within the United States prior to the date of the proclamation on any contrivance by means of which the work may be mechanically performed.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State :

Douglas DILLON

Enclosure :

Copy of proclamation.

His Excellency Ernani do Amaral Peixoto
Brazilian Ambassador

[No. 3175]

COPYRIGHTS—BRAZIL

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS section 1 of title 17 of the United States Code, entitled "Copyrights", as codified and enacted into positive law by the act of Congress approved July 30, 1947, 61 Stat. 652, provides in part as follows :

"Any person entitled thereto, upon complying with the provisions of this title, shall have the exclusive right :

...

"(e) To perform the copyrighted work publicly for profit if it be a musical composition; . . . *Provided*, That the provisions of this title, so far as they secure copyright controlling the parts of instruments serving to reproduce mechanically the musical work, shall include only compositions published and copyrighted after July 1, 1909, and shall not include the works of a foreign author or composer unless the foreign state or nation of which such author or composer is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States similar rights."; and

¹ See below.

WHEREAS section 9 of the said title 17 provides in part that the copyright secured by such title shall extend to the work of an author or proprietor who is a citizen or subject of a foreign state or nation;

“(b) When the foreign state or nation of which such author or proprietor is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens, or copyright protection, substantially equal to the protection secured to such foreign author under this title or by treaty; or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States may, at its pleasure, become a party thereto.”; and

WHEREAS section 9 of the said title 17 further provides :

“The existence of the reciprocal conditions aforesaid shall be determined by the President of the United States, by proclamation made from time to time, as the purposes of this title may require . . .”; and

WHEREAS the Government of the United States of America and the Government of the United States of Brazil are parties to the Convention on Literary and Artistic Copyright, signed at Buenos Aires on August 11, 1910; and

WHEREAS satisfactory official assurances have been received that under provisions of Brazilian law and by the terms of the above-mentioned Convention of Buenos Aires citizens of the United States of America are entitled to obtain copyright in the United States of Brazil for their works on substantially the same basis as citizens of the United States of Brazil, including rights similar to those provided by section 1 (e) of title 17 of the United States Code :

NOW, THEREFORE, I, Dwight D. Eisenhower, President of the United States of America, do declare and proclaim :

That there exist with respect to the United States of Brazil the reciprocal conditions specified in sections 1 (e) and 9 (b) of the said title 17 and that citizens of the United States of Brazil are entitled to all the benefits of the said title 17 :

Provided, that the provisions of section 1 (e) of the said title 17, so far as they secure copyright controlling parts of instruments serving to reproduce mechanically the musical work, shall apply only to compositions published and copyrighted after the date of this proclamation which have not been reproduced in the United States prior to the date hereof on any contrivance by means of which the work may be mechanically performed.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this 2nd day of April in the year of our Lord nineteen hundred and fifty-seven, and of the Independence of the United States of America the one hundred and eighty-first.

Dwight D. EISENHOWER

[SEAL]

By the President :
John Foster DULLES
Secretary of State